89-104

No. _____

_____

Supreme Court, U.S.
FILED
JUN 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

1988-89 Term

_____

RANDALL B. WOODFIELD,

Petitioner,

v.

ANN RULE (aka "Andy Stack"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

_____

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

_____

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June 21, 1989

QUESTIONS PRESENTED

1. Whether an inmate excluded from the protection of Oregon's disability statute, which tolls the statute of limitations for commencing civil actions to those inmates who are serving time for a misdemeanor or serving a sentence for a term of less than life, is denied his right to equal protection under the Fourteenth Amendment of the United States Constitution and Privileges and Immunities Clause of the Oregon Constitution simply because he is serving a life term.

2. Whether the Oregon legislature could have reasonably, rationally or arguably conceived that excluding from the benefits of the tolling statute convicts serving life sentences serves important state interests.

LIST OF PARTIES

The parties to the proceedings below were petitioner Randall B. Woodfield and the respondents Ann Rule, aka "Andy Stack" and the New American Library, Inc.

The respondents before this court are Ann Rule, aka "Andy Stack" and the New American Library, Inc.

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IN THE SUPREME COURT OF THE UNITED STATES

1988-89 Term

RANDALL B. WOODFIELD,

Petitioner,

v.

ANN RULE (aka "Andy Stack"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The petitioner Randall B. Woodfield respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on March 23, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals for the Nintn Circuit is not published, but it is reprinted in tne appendix hereto, p.

10a, infra.

The order and opinion of the United States District Court for the District of Oregon (Panner, D.J.) has not been reported. It is reprinted in the appendix hereto, p. 5a, infra.

The findings and recommendation and order of Magistrate Michael R. Hogan of the United States District Court for the District of Oregon have not been reported. It is reprinted in the appendix hereto, p. 1a, infra.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. § 1332, the petitioner brought this suit in the United States District Court for the District of Oregon. On January 13, 1988, the District of Oregon adopted the findings and recommendations and opinion of the United States Magistrate, filed November 6, 1988, see p. 1a, infra, and granted respondent's motion for summary judgment and ordered the action dismissed. See p. 5a, infra.

On petitioner's appeal, the Ninth

Circuit on March 23, 1989, entered a judgment and an opinion affirming the District Court's order of dismissal. See p. 9a, infra. No petition for rehearing was sought.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

U.S. Const. Amend. XIV, § 1. Equal Protection Clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the United States nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Or. Const. Art. I, § 20. Privileges and Immunities Clause.

No law shall be passed granting to

any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

Or. Rev. Stat. § 12.160. Suspension of statute of limitations for persons under disability.

If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 and 12.070 to 12.250 is:

(1) Within the age of 18 years,

(2) Insane, or

(3) Imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life,

the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brough shall not be extended more than five years by any such disability, nor shall it be extended

in any case longer than one year after such disability ceases.

STATEMENT OF THE CASE

Petitioner is an inmate at Oregon State Penitentiary serving a sentence for a term of his natural life.

Petitioner filed a complaint pro se on April 29, 1987 against respondents, alleging defamation and invasion of privacy, claims arising out of a book written by respondent Rule and published by respondent New American Library. The book was published March 5, 1984.

Defendants moved for summary judgment and alternatively for dismissal on grounds the suit was time-barred. Respondents thereupon moved for, among other relief, dismissal of the lawsuit as untimely filed.

Oregon requires a claim for defamation (libel) to be filed within one year of publication. A claim arising out of

invasion of privacy must be filed within two years of the act.

Oregon statutes extend the statute of limitations for perfecting civil claims to those who are disabled by reason of incarceration. The statute expressly excludes from the tolling benefits inmates serving a term of life .

Counsel for petitioner raised the constitutional issues of denial of equal protection and privileges and immunities in a memorandum and oral argument in opposition to respondent's motions to dismiss and for summary judgment. Petitioner since has focused his attention away from the merits of the case and toward overcoming the time-barred barriers raised by respondent and recognized by the courts below.

The initial findings and recommendation and order, filed by the United States Magistrate of the Distrct Court, dismissed the action as time-barred. It

did not reach the constitutional issues raised by petitioner. The magistrate found that Or. Rev. Stat. § 12.160 (3) did not apply to petitioner. Petitioner was serving a life sentence and did not have a release date set by the State Board of Parole; therefore, he was excluded from the tolling benefits by the plain language of the statute.

On de novo review, and without further opinion, the United States District Court adopted the magistrate's findings and recommendations and ordered the complaint dismissed as untimely filed.

On appeal by petitioner, the Ninth Circuit affirmed, but in a decision based solely on the state and federal constitutional issues. Petitioner had argued that the Equal Protection Clause of the Fourteenth Amendment, and the Privileges and Immunities Clause of the Oregon Constitution, forebade the exclusion from the

benefits of Or. Rev. Stat. § 12.160 (3) of a prisoner serving a life term. Petitioner pointed out that no rational basis existed for distinguishing between inmates serving life and those serving terms of less than life.

The Ninth Circuit instead concluded that the exclusion of those serving life sentences is neither arbitrary nor irrational. The statute has been part of Oregon law since early statehood; it has no apparent legislative history accompanying it. The Ninth Circuit, however, determined that the legislature could reasonably decide that the distinction among inmates serves several state interests.

The Court below enumerated three such state interests: (1) former inmates who are freed of the disability could litigate without the stigma of being an inmate if granted additional time; (2) an inmate had additional time to marshal resources

to bring claims; and (3) the prison system is spared the logistical problems of inmates involved in litigation.

If it were merely conceivable that the legislature could have concluded that the classification of inmates in Or. Rev. Stat. § 12.160 (3) promoted the above state interests, then the classification cannot be arbitrary. So reasoned the Ninth Circuit, which accordingly affirmed the dismissal of the case.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision imputes to the state legislature reasons, which are in themselves arbitrary and irrational, for classifying inmates; the decision raises important and unresolved problems regarding minimum standards the of review of classification schemes in general, and in particular, of a scheme found in a common but rarely construed statute.

Tne ascribed state interests are arbitrary and irrational.

The legislature simply would not have decided that the state had the interests listed by the Ninth Circuit, because they conflict with other of the legisla-

ture's goals and policy, and because it would be the state's interest to break down rather than promote arbitrary classifications.

1. Stigma. The Ninth Circuit assigned as a state interest additional time for an inmate to free himself, presumably by release, of the stigma of being an inmate litigant. First, the additional time granted the inmate serving less than life a maximum of five years additional time to file an action. Yet Oregon law allows for those convicted of certain felonies to be sentenced to 10 and 20 years, Or. Rev. Stat. § 161.605, for inmates to serve a minimum of up to one-half the sentence before parole consideration, Or. Rev. Stat. § 144.110, and for multiple convictions to be served consecutively, Or. Rev. Stat. § 144.783.

The legislature obviously intends to keep certain inmates incarcerated for

terms far beyond the mere five years of tolling to file claims; it must have also contemplated those inmates would necessarily bear the "stigma" of being an inmate while litigating.

Second, a former inmate who litigates his claim on the outside after taking advantage of the tolling statute will still bear the stigma of inmate status. Assuming a given claim will go to trial, the ex-inmate litigant's credibility will always be at issue if he testifies. Under the Oregon Evidence Code, Rule 609 (1), a person's prior felony conviction is admissible for purposes of impeachment. It is admissible regardless of the fact that the fact of a felony conviction substantially outweighs the probative value. State v. King, 307 Or. 332, ____ P.2d ____ (1989). The stigma stays with the inmate long after his release.

Logistics. The Ninth Circuit sug-

gests that the classification scheme serves the state interest in sparing a correctional institution of inmate's litigating from within. But the Oregon legislature has codified common-law legal remedies available to all inmates. Among these are the Post-Conviction Hearing Act, 1959 Or. Laws c. 636, codified at Or. Rev. Stat. § 138.510 et seq. This affords every inmate an opportunity to challenge the validity of his conviction and incarceration without a limit in time within which to file an appropriate petition for relief. The legislature has surely promoted litigation from within and spares not the institution from logisitics.

Indeed, the legislature has authorized the State Department of Corrections to draft rules in accordance with the following stated purpose and policy

> Purpose: To provide inmates with the opportunity to exercise their legal right to access the courts."

> Policy: Every inmate incarcerated in a Department of Corrections facility will be afforded the opportunity to have meaningful access to the courts. Each inmate will have the opportunity to present any issue, including * * * pursuing remedies in connection with civil legal problems * * * *.
>
> Or. Adm. R. 291-139-005 (2) and (3).

Thus, the Ninth Circuit imputes to the legislature a state interest clearly in conflict with express public -- and legislative -- policy.

Marshal resources. Or. Rev. Stat. § 12.160 affords the once-disabled litigant only one year after the termination of the disability to file a timely claim, and in no instance beyond five years of tolling. Rare would be the ex-convict who would be in a position in less than one year of release to support civil litigation. This is simply not a realistic assessment of what the legislature may have intended by the classification scheme; it is not a realistic state interest.

The decision below suggests that

the Oregon legislature would in fact have supported a kind of classification scheme which bucks the national trend to get rid of the distinctions. Legislatures are now either removing the tolling benefits for all inmates, see, e.g., 1987 Utah Laws, c. 19, § 5, codified at Utah Code Ann. § 78-12-36, or granting the tolling benefits to all inmates, see, e.g., 1979 Wis. Laws c. 323, § 28, codified at Wis. Stat. Ann. § 893.16. It is not reasonable to ascribe to the Oregon legislature any intent; it is not even arguable that the legislature would recognize the above as legitimate state interests.

The standard promotes unwarranted speculation as to legislative intent.

Authority for legitimizing a statutory classification scheme so long as the court finds that a legislature "could have rationally concluded that the statute might promote its goals" is found in Minnesota v. Clover Leaf Creamery Co., 449 U.S.

456 (1981). The Ninth Circuit relied on Clover Leaf Creamery in its decision upholding the scheme in Or. Rev. Stat. § 12.160 (3).

That standard promotes speculation for any court, and the Ninth Circuit by necessity did speculate as to what the Oregon legislature might have reasoned when it enacted the statute. Any court would have license to imagine any circumstances that "need be only plausable, arguable, or conceivable." See Jackson Water Works, Inc. v. Public Utilities Comm'n, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987). Under such a low standard, any facially neutral statute that does not discriminate against a suspect class will be accorded legitimacy regardless of the irrationality of the motivation underlying the enactment of the statute.

CONCLUSION

This petition for certiorari should

be granted for the reasons stated above. The Ninth Circuit has lowered to an unreasonable level the standard to review a statutory classification scheme. When no legislative history exists, as with the very old Or. Rev. Stat. § 12.160, the courts should not be able to ascribe just any rationale to a scheme. The standard articulated in Clover Leaf Creamery does give proper deference to a legislature's will. But the speculation allowed by that case should not be license to give credence to legislative rationale where none could have existed. It is possible that a classification scheme never did make sense.

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Certiorari would afford this court an opportunity to clarify a threshold for a rational basis test, at the same time construing a classification long in existence but rarely examined.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff,	)	
v.	)	Civil No. 87-6189-E
ANN RULE, et al., Defendants.	)	ORDER and FINDINGS and RECOMMENDATION

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ATTORNEYS FOR DEFENDANTS

HOGAN, Magistrate:

This is a diversity action for defamation and invasion of privacy.

Defendants move for summary judgment (#10). Plaintiff moves (#14) to continue the motion for summary judgment until further discovery is completed. Defendants' motion should be granted, and plaintiff's motion is denied.

BACKGROUND

In 1982, plaintiff was convicted of murder, attempted murder, and two counts of first degree sodomy. State v. Woodfield, 62 Or.App. 69, 659 P.2d 1006 (1983), rev. denied, 295 Or. 259 (1983). He is now serving a life sentence. Plaintiff was accused of being the "I-5 bandit", "an individual responsible for several serious crimes along that interstate highway." Id., 659 P.2d at 1108. Plaintiff was imprisoned in 1981 on the charges and has remained imprisoned since then.

On March 5, 1984, defendant New American Library published a book entitled The I-5

Killer, written by defendant Ann Rule. Plaintiff alleges that this book defames him.

Plaintiff filed the complaint on April 29, 1987.

DISCUSSION

Defendants make two arguments in support of their motion: (1) the statute of limitations bars this action, and (2) plaintiff is "libel-proof" as a matter of law. Because the statute of limitations issue is dispositive, the court will not decide the libel issue.

The applicable statute of limitations for libel is one year, ORS 12.120(2), which accrues on the date of first publication; and for invasion of privacy is two years. ORS 12.110.

Plaintiff filed the complaint more than thtee years after The I-5 Killer was first published. Plaintiff argues, however, that because he has been continuously imprisoned

since before the book was published, the limitations period was tolled by ORS 12.160(3) which states:

> If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 and 12.070 to 12.260 is:
> . . .
>
> (3) imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life,
>
> the time of such disability shall not be part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

Plaintiff argues that his "life sentence" does not exclude him from the protection of ORS 12.160(3) because he has the possibility of parole. Plaintiff argues that "life no longer means life."

Plaintiff's Supplement, p. 2. The record indicates, however, that plaintiff does not have a parole date. The court cannot speculate about plaintiff's possible release at an unknown date in the future. The record before this court is that plaintiff's life sentence does indeed mean that plaintiff will serve for a "term" of his "natural life." Therefore, ORS 12.160(3) does not apply to this case, and plaintiff's action is barred by the limitations prescribed in ORS 12.110 and 12.120(2), and defendant's motion for summary judgment (#10) should be granted.

The parties do not dispute the facts regarding the statute of limitations issue. The only possible purpose for further discovery would be regarding the merits. The court has not reached the merits because of the untimely filing of the complaint. Therefore, plaintiff's motion to continue the

summary judgment motion pending further discovery(#14) is denied.

Dated this __[6th]__ day of November, 1987.

/s/ Michael R. Hogan

UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff, v. ANN RULE, et al., Defendants.	)	Civil No. 87-6189-E ORDER

PANNER, J.

Magistrate Michael R. Hogan filed his Findings and Recommendation on November 6, 1987. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d

1309, 113 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. I ADOPT the Magistrate's Findings and Recommendation that defendant's motion for summary judgment (#10) should be GRANTED.

IT IS SO ORDERED

DATED this ___[11th]___ day of January, 1988.

/s/ Owen M. Panner
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff, v. ANN RULE, et al., Defendants.	)	Civil No. 87-6189-E JUDGMENT

Based on the record,

IT IS ORDERED AND ADJUDGED this action is dismissed.

DATED: January [13], 1988

ROBERT M. CHRIST, CLERK

By, /s/ Dan Marsh
Dan Marsh, Deputy

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL B. WOODFIELD, Plaintiff-Appellant v. ANN RULE, et al., Defendants-Appellees	No. 88-3623 Civil No.87-6189-OMP JUDGMENT

THIS CAUSE came to be heard on the Transcript of the Record from the United States District Court for the Eugene District of OREGON and was duly submitted.

ON CONSIDERATION WHEREOF, It is not here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

Filed and entered 3/23/89

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL B. WOODFIELD, Plaintiff-Appellant, -vs-. ANN RULE, aka "Andy Stack"; NEW AMERICAN LIBRARY, INC., Defendants-Appellees	CA No. 88-3623 DC No.CV 87-6189-OMP M E M O R A N D U M

Appeal from the United States District Court
for the District of Oregon
Honorable Owen M. Panner, District Judge,
Presiding
Argued and Submitted March 10, 1989
Portland, Oregon

BEFORE: CANBY, THOMPSON AND LEAVY, CIRCUIT JUDGES

Woodfield appeals the summary judgment holding that his action is barred by the statute of limitations. We affirm.

Woodfield filed suit against Rule, the author of The I-5 Killer, and the publisher,

New American Library, for defamation and invasion of privacy. Woodfield filed his action on April 29, 1987, more than three years after first publication of the work. The Oregon statute of limitations for libel is one year, Or. Rev. Stat §12.120(2) (Supp. 1987), and the applicable limitation for invasion of privacy is two years. Id. at §12.110. Wood field argued that Oregon's tolling statute, Or. Rev. Stat. § 12.160, extended the time in which he had to file his claims. The district court granted the defendants' motion for summary judgment, holding that the tolling statute did not apply, and the statute of limitations thus barred his claims.

Woodfield argues that Oregon's tolling statute violates the equal protection clause of the United States Constitution, Art. I. § 20. The statute provides a tilling period of the statute of limitations for persons serving

prison sentences for terms "less than the person's natural life." Or. Rev. Stat. § 12.160(3). Woodfield , who is presently serving a life sentence of imprisonment, argues that the exclusion of "lifers" from the benefits of the tolling statute violates the equal protection clause.

The tolling statute does not create or deny a prisoner's right to commence legal action, it merely extends the time in which to file, so a fundamental right of access to the courts is not involved. Harris v. Craig, 299 Or. 12, 697 P.2d 189, 190 (1985). In addition, Woodfield is not a member of a protected class. As a result, the statute must be analyzed under a rational basis standard. Vance v. Bradley, 440 U.S. 93, 96-97 (1979). Under this standard, the statute must be upheld unless it bears no reasonable relationship to the furtherance of a legitimate state interest and is irrational.

Vance, 440 U.S. at 97; United States v. Alexander, 673 F.2d 287, 288 (9th Cir.), cert. denied, 459 U.S.876 (1982). The same standard applies to Woodfield's arguments under the Oregon Constitution. City of Klamath Falls v. Winters, 289 Or. 757, 619 P.2d 217, 224 n.10 (1980). The classification need only be plausible, arguable, or conceivable. Jackson Water Works, Inc. v. Public Utilities Comm'n, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987). If the legislature could rationally have concluded that the statute might promote its goals, the classification is reasonable and constitutional. Minnesota v. Clover Leaf Creamery Co.,449 U.s. 456 (1981).

The legislature could reasonably decide that a tolling statute providing additional time for persons imprisoned for a period of years, as opposed to those serving a life sentence, serves several state interests.

Statutes of limitation and tolling statutes represent a public policy about the privilege to litigate and are subject to a relatively large degree of legislative control. Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945). Imprisonment is treated as a temporary disability in the statute, as are infancy and insanity. See Or. Rev. Stat. § 12.160. Those serving a fixed term are granted additional time, and may be able to pursue their claims without the stigma of being an inmate, and perhaps after being able to marshal resources to bring their claims. The state also has an interest in allowing an inmate to wait until after release to initiate litigation in that it spares the prison system the logistical problems of prisoners conducting litigation from within. It is rational to exclude persons serving life sentences from the benefits of the tolling

statute because these interests will not be served.

We cannot say the exclusion of persons serving life sentences from the benefits of the tolling statute is arbitrary or irrational. The classification bears a rational relationship to state interests, and must be upheld.

AFFIRMED. (Footnote: In light of our disposition, we need not reach defendant's contention that Woodfield is "libel-proof.")